IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

Regular Second Appeal No.2375 of 2005
Date of Decision: 15.5.2007

Ashwani Kumar ..Appellant

Versus

Haryana State and others ..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr. Vivek Sharma, Advocate
for the appellant.

Mr. Ajay Gulati, Assistant Advocate General,
Haryana for the respondents.

H.S.BHALLA, J.

Appellant lost his bread on 11.4.1996 when his services were terminated by the Punishing Authority. Thereafter, he also preferred an appeal before the appellate authority, which was also dismissed on 23.5.1998. In order to revive his bread, he had no option but to knock the door of the civil court by filing a suit for declaration, by virtue of which he has prayed that the orders of discharge from service passed by the Punishing Authority and that of the appellate authority are illegal, against the rules and are liable to be set aside. On these premises, the suit filed by the plaintiff-appellant was ordered to be decreed vide judgment and decree dated 13.2.2004 passed by Civil Judge (Junior Division), Hisar.

Feeling aggrieved against the judgment and decree passed by the learned lower Court, the State of Haryana preferred an appeal before the learned Additional District Judge, Hisar, who, vide judgment and decree dated 21.4.2004, accepted the appeal and reversed the findings recorded by the learned lower court, resulting in dismissal of the suit filed by the plaintiff-appellant, the operative part of which runs as under:-

> " Resultantly, in view of the above discussion and for the foregoing reasons, the impugned order passed by SP, Bhiwani whereby the plaintiff was discharged from the duty could not be proved to be a punitive in nature and no stigma is being attached by the impugned order and the order is an order of discharge simpliciter passed by the Competent Authority under rule 12.21 of Punjab Police Rules and in such a state of affairs the findings of the lower court are not sustainable in the eyes of law and the learned lower court could not properly appreciate either the interpretation of rule 12.21 of Punjab Police Rules or the legal as well as factual proposition applicable to the present case and as such the present appeal is hereby accepted and on acceptance of the appeal the findings of the lower court are reversed and the suit of the plaintiff fails and the same is hereby dismissed. Parties are left to bear their own costs. Decree-sheet be prepared accordingly. File be consigned to the record room after due compliance."

Feeling dissatisfied with the judgment and decree passed by the learned Appellate Authority, appellant has filed the appeal in hand.

It is an admitted case of both the parties that the appellant was appointed as a Constable in the Haryana Police on 18.4.1994 and that he absented from duty for a period of 63 days and exercising the power under paragraph 12.21 of the Punjab Police Rules, the Superintendent of Police, Bhiwani, discharged the plaintiff from service and the appellate authority dismissed the appeal of the appellant. In order to proceed further, it is necessary to reproduce rule 12.21 of the Punjab Police Rules, which runs as under:-

> "Discharge of inefficient: A constable who is found unlikely to

prove an efficient police officer may be discharged by the Superintendent at any time within three years or enrollment. There shall be no appeal against an order of discharge under this rule."

The Punishing Authority, while exercising its powers under this Rule, passed the impugned order, the relevant portion of which, in order to arrive at a right conclusion, is reproduced as under:

" A perusal of his record shows that in nearly two years of his service, he has absented for more than 7 months. He did not complete his training and remained absent without any leave. He is absent even now for the last three months. It is clear that he does not have any regard for the laid down procedure and rules. This proves that he is not likely to prove an efficient Police Officer. Repeated notices to him have evoked no response from him. This shows that he had nothing to say in this regard. I, therefore, under the powers conferred under P.P.R. 12.21 hereby discharge Recruit Constable Ashwani Kumar No.289/BWH with immediate effect."

Learned counsel for the appellant refuted the said contention and impugned order was, in fact, an order of dismissal and has been passed by way of punishment on account of charges of absence framed against the appellant and no show cause notice was ever served upon the appellant to explain the circumstances of his absence from duty.

I have considered the submissions raised by the learned counsel for the parties and for the reasons to be recorded by me hereinafter, I find that the impugned order is liable to be set aside. The order clearly spells out that the charges of absence have been levelled against the appellant and at the time of passing the impugned order, what was raking in the mind of the punishing authority is clearly spelled out from

the relevant order, which has been reproduced above. The order of discharge clearly spells out that he absented from duty for more than seven months and did not complete his training and remained absent without any leave. All this shows that there was a report against the appellant pertaining to charge of absence, which is spelled out from the impugned order. In fact, the order of discharge was passed on the basis of absence charges and admittedly, the same was passed without conducting any inquiry. The order clearly reveals that it is beating the drum of absence against the appellant. Once it is recorded in the order, it cannot be said that there is no stigma attached with the order of discharge. Once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. I would also like to observe that even when an order of discharge looks innocuous, but on close scrutiny, by looking behind the curtain, and if any material exists of misconduct and which is the foundation of passing of the order of discharge, the order of discharge can be termed as a stigmatic and in such like circumstances, opportunity of hearing is required to be given. It is also not in dispute that no opportunity was given to the appellant before passing the order of discharge. When charges of absence are being levelled against the delinquent official, it was obligatory for the punishing authority to give an opportunity of hearing to the appellant before passing the order of discharge.

In this view of the matter, judgment and decree dated 21.4.2004 passed by the learned lower appellate authority is set aside and that of the judgment and decree dated 13.2.2004 passed by the learned lower Court is restored. However, the respondents will be at liberty to pass a fresh order in accordance with rules for any misconduct on the part of the appellant.

With the above observations and directions, appeal is accepted.

15.5.2007 (H.S.BHALLA)
VK JUDGE